

ORIGINAL

FILED IN CHAMBERS
U.S.D.C. Atlanta

JAN 25 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Kevin P. Weimer, Clerk
By: Deputy Clerk

UNITED STATES OF AMERICA

v.

DENISE THOMAS

Criminal Indictment

No. **1:22-CR025**

THE GRAND JURY CHARGES THAT:

Counts One and Two

Wire Fraud

(18 U.S.C. § 1343)

1. From on or about January 13, 2021, and continuing until at least on or about December 28, 2021, within the Northern District of Georgia and elsewhere, the defendant, DENISE THOMAS, did knowingly devise and intend to devise a scheme and artifice to defraud, and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises, and by omissions of material facts, well knowing and having reason to know that said pretenses were and would be false and fraudulent when made and caused to be made and that said omissions were and would be material, and in so doing, with the intent to defraud, caused interstate wire communications to be made, in furtherance of the scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

Background

It is relevant to the Indictment that during the above-listed time period:

The Defendant

2. THOMAS, a resident of Stone Mountain, Georgia, was the sole owner and controller of Pink Smoke Shooters Range & Gun Club Limited Co. ("Pink Smoke").
3. Pink Smoke was registered and affirmed by the Georgia Secretary of State as a Domestic Limited Liability Company on June 15, 2020, with an effective date of June 1, 2020.

The Small Business Administration

4. The United States Small Business Administration ("SBA") is an executive branch agency of the United States government that provides support to entrepreneurs and small businesses. The mission of the SBA is to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters.
5. As part of this effort, the SBA enables and provides for loans through banks, credit unions, and other lenders. These loans have government backed guarantees.

The Paycheck Protection Program

6. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.

7. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses through a program referred to as the Paycheck Protection Program ("PPP"). Congress has since increased the authorization amount for PPP loans to over \$813 billion. To qualify for the PPP, eligible small businesses must have been in operation on or before February 15, 2020, maintained employees, and realized monthly payroll costs.

8. To obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, a small business (through its authorized representative) must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures are used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan must provide documentation of their payroll expenses.

9. A PPP loan application must be processed by a participating lender. If a PPP loan application is approved, the participating lender funds the PPP loan using its own monies, which are 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA while processing the loan.

10. PPP loan proceeds must be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

Relevant Financial Institutions and Affiliates

11. Amur Equipment Finance, Inc. (“Amur”) is a commercial equipment finance provider based in Grand Island, Nebraska. Amur is an approved SBA lender of PPP loans.

12. Wells Fargo Bank is a financial institution based in San Francisco, California, that is insured by the Federal Deposit Insurance Corporation (“FDIC”). Wells Fargo Bank is an approved SBA lender of PPP loans.

13. BB&T is a financial institution based in Charlotte, North Carolina, that is insured by the FDIC. BB&T is an approved lender of PPP loans.

Purpose of the Scheme to Defraud

14. The purpose of the scheme was for THOMAS, by submitting false and fraudulent information about her business Pink Smoke, to unlawfully obtain a PPP loan from Amur and to use the fraudulently acquired PPP loan proceeds to benefit herself, in violation of the terms of the PPP loan agreement.

Manner and Means

15. The manner and means by which THOMAS carried out the scheme to defraud included the following:

16. THOMAS submitted and caused to be submitted to Amur false and fraudulent documents concerning Pink Smoke. The false and fraudulent documents generally created the appearance that Pink Smoke was founded in 2015, paid over \$9 million annually in payroll, employed sixty-one (61) employees, and was solvent and operational with high volume cash flows. For example, THOMAS submitted, and caused to be submitted, the following records to Amur in connection with her application for a PPP loan:

- a. A false and fraudulent Certificate of Organization from the Georgia Secretary of State that claimed Pink Smoke was organized on June 15, 2015.
- b. A false and fraudulent letter from the IRS that claimed Pink Smoke received an IRS Employer Identification Number ("EIN") on June 15, 2015.
- c. A false and fraudulent 2019 IRS Form 940 ("Employer's Annual Federal Unemployment (FUTA) Tax Return") for Pink Smoke that claimed that the company paid \$9,039,937.32 to its employees and \$54,239.62 in FUTA.
- d. A false and fraudulent 2020 IRS Form 941 ("Employer's QUARTERLY Federal Tax Return") for Pink Smoke that claimed that in the first tax quarter of 2020, the company: (1) paid a total of \$1,793,147.38 in wages, tips, or other compensation, (2) had sixty-one employees, and (3) withheld \$405,817.32 in federal income tax.
- e. False and fraudulent bank statements for THOMAS and Pink Smoke from BB&T for the months of January 2020 and February 2020 which

documented that the business had deposits of \$1,863,052.61 (January 2020) and \$1,618,892.24 (February 2020) and withdrawals of \$968,155.06 (January 2020) and \$964,170.12 (February 2020).

17. In fact, and in truth, (1) the Georgia Secretary of State issued the Certificate of Organization for Pink Smoke on or about June 1, 2020; (2) the IRS EIN number was created in or about June 2020; (3) from 2019 through the first quarter of 2020, Pink Smoke did not make any tax filings with the IRS, pay unemployment tax to the IRS, withhold federal income tax for employees, or have sixty-one employees; and (4) the BB&T account whose bank statements THOMAS submitted to Amur as a part of the PPP loan application was opened on or about June 29, 2020, and did not have the withdrawal and deposit activity represented.

18. It was also part of the scheme to defraud that THOMAS submitted a PPP loan application to Amur in which she sought a loan of approximately \$1,214,090.00. In the PPP loan application, THOMAS falsely certified that any PPP funds loaned to Pink Smoke would be used to retain workers and fund payroll, and to make mortgage interest payments, lease payments, and utility payments. In fact, as THOMAS well knew, when she submitted the PPP loan application she intended to spend (and did spend) the PPP money to benefit herself.

19. On or about March 16, 2021, based on THOMAS's false and fraudulent misrepresentations, Amur approved and funded a PPP loan for Pink Smoke in the amount of \$1,214,090.00. The Controller of Amur, while located in Nebraska, initiated an electronic transfer of the funds from Amur's account

#2710 at Wells Fargo, located in Nebraska. The electronic transfer order was then transmitted from Nebraska to Wells Fargo's electronic wire processing center in Shoreview, Minnesota via the internet, which resulted in the transfer of the loan proceeds to BB&T account #6743 controlled by THOMAS and located in Georgia.

20. Shortly after receiving the proceeds of the PPP loan in BB&T account #6743, THOMAS transferred and caused the transfer of some of the PPP loan proceeds from account #6743 to the accounts #8995, #6778, #6735, and #6751 that she also controlled at BB&T.

21. Using the PPP proceeds in accounts #6743, #8995, #6778, #6735, #6751, THOMAS spent almost \$61,000 of the loan funds, including, but not limited to:

- a. On or about March 17, 2021, THOMAS spent \$388.55 at Beauty Town (#8995);
- b. On or about March 18, 2021, THOMAS purchased a 2013 BMW X6 for \$25,000.00 (\$8,200.00 from #6743 and \$8,200.00 from #6778, and \$8,600.00 by check #8995);
- c. On or about March 22, 2021, THOMAS spent \$280.95 at UGG (#6743);
- d. On or about March 19, 2021, THOMAS spent \$654.87 at Venus Beauty Supply (#6743);
- f. On or about March 22, 2021, THOMAS spent \$11,921.49 at Fendi, a luxury retailer (\$5,450.00 from #6743) (\$6,471.49 from #6778);
- g. Between on or about March 18, 2021 and on or about March 25, 2021, THOMAS depleted funds totaling \$8,775.00 via Cash App transfer (#6743 and #8995);

- h. On or about March 22, 2021, THOMAS spent \$430.60 at Hotel Intercontinental in Atlanta (#6778);
- i. On or about March 22-23, 2021, THOMAS spent \$470.16 at Meridien Hotels in Atlanta (#6778);
- j. On or about March 22, 2021, THOMAS spent \$2,665.79 on Amazon (#8995);
- k. On or about March 22, 2021, THOMAS spent \$1,211.89 at Walgreens (#8995);
- l. On or about March 26, 2021, THOMAS spent \$470.88 at Meridien Hotels in Atlanta (#6743).

Execution of the Scheme

22. On or about each date set forth below, in the Northern District of Georgia and elsewhere, THOMAS, for the purpose of executing and attempting to execute the scheme and artifice to defraud described above, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, promises, and omissions, with intent to defraud, did cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, that is, the wire communications described below:

COUNT	DATE	DESCRIPTION OF WIRE COMMUNICATION
1	1/13/2021	PPP Borrower Application Form submitted via the internet to Amur containing false information related to Pink Smoke's payroll expenses and the purpose of the applied-for PPP loan
2	3/16/2021	Wire transfer of \$1,214,090.00 from Amur's Wells Fargo account #2710 in Nebraska to BB&T account

		#6743 in Georgia via Wells Fargo's electronic wire processing center in Minnesota
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All in violation of Title 18, United States Code, Section 1343.

Forfeiture Provision

23. Upon conviction of any of the violations of Title 18, United States Code, Section 1343 charged in Counts One and Two, the defendant shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(2) and Title 28, United States Code, Section 2461(c), all property constituting or derived from proceeds obtained, directly or indirectly, as a result of such violation, including, but not limited to, the following:

- a. \$106,804.47 which was maintained in Truist Bank account number ending in 6735, held in the name of Miss Denise Thomas d/b/a Pink Smoke Shooters Range & Gun Club;
- b. \$1,000,978.64 from Truist Bank account number ending in 6743, held in the name of Miss Denise Thomas d/b/a Pink Smoke Shooters Range & Gun Club;
- c. \$14,148.66 from Truist Bank account number ending in 6751, held in the name of Miss Denise Thomas d/b/a Simply Delete It;
- d. \$235.03 from Truist Bank account number ending in 6778, held in the name of Miss Denise Thomas d/b/a Simply Delete It; and
- e. \$30,995.34 from Truist Bank account number ending in 8995, held in the name of Denise Thomas d/b/a Pink Smoke Shooters Range & Gun Club.
- f. MONEY JUDGMENT: For the proceeds that the defendant obtained as a result of the offenses charged in Counts One and Two.

24. If, as a result of any act or omission of the defendant, any property subject to forfeiture:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

the United States intends, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

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A True BILL
[Signature] 1/25/22
FOREPERSON